

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF OHIO
WESTERN DIVISION

DELTRO ELECTRIC LTD.

Plaintiff

v.

**ELECTRIC POWER SYSTEMS
INTERNATIONAL, INC., et al.**

Defendants

Case No. 1:21-cv-00303

Judge Douglas R. Cole

Magistrate Judge Karen L. Litkovitz

**PLAINTIFF DELTRO ELECTRIC LTD.'S MOTION TO EXPEDITE
PENDING MOTION FOR LEAVE TO AMEND COMPLAINT AND MOTION FOR
PARTIAL SUMMARY JUDGMENT**

Plaintiff Deltro Electric Ltd. ("Deltro") submits this Motion to Expedite Deltro's Pending Motion for Leave to Amend Complaint and Motion for Partial Summary Judgment.

A. Pertinent Background

This case arises from the construction of a solar electricity facility in Brown County, Ohio. The project's general contractor, PCL Construction Services Inc. ("PCL"), subcontracted Deltro and Deltro in turn subcontracted Defendant Electric Power Systems International, Inc. ("EPS"). After a payment dispute between Deltro and EPS arose, EPS filed a \$2,171,921 mechanic's lien on the project. PCL then purchased and had approved by the Brown County Court of Common Pleas a surety bond as substitute security for the lien so that the project property could be released, i.e. bonded off the lien. Ohio's mechanic's lien statute requires mechanic's lien bonds to be in the amount of 1.5 times the lien amount. O.R.C. 1311.11(C)(1). Therefore, PCL's bond was for \$3,257,882. (ECF No. 14-5, PageID # 193).

PCL has advised Deltro that the annual premium to maintain the bond is significant. Deltro has contractual obligations to indemnify PCL for the premiums to maintain the bond. Deltro moves for expedited resolution of the two pending motions because the next annual bond premium will come due on April 20, 2022. If Deltro's motions towards invaliding the lien are granted before April 20, 2022, it will mitigate the parties' damages by negating the next bond premium.

Deltro has been working towards obtaining a ruling on the validity of EPS's lien since the lien was filed in March 2021. Specifically, Deltro filed its state action complaint for a declaratory judgment in April 2021. (ECF No. 1-1, state record). Around that time, Deltro also began preparing its motion for summary judgment. Further, in March 2021 Deltro sent EPS a letter setting forth the factual grounds, argument, and legal citations that the pending motion for summary judgment is based on. In the letter Deltro expressly notified EPS that it was providing notice of the motion and grounds so that EPS could prepare its response. Exhibit 1, 3/31/21 Deltro letter to EPS. Then in April 2021 Deltro sent EPS a second letter notifying EPS that the state court complaint had been filed and a motion for summary judgment was forthcoming. Exhibit 2, 4/9/21 Deltro letter to EPS. However, EPS then removed the action to federal court which Deltro contended was removed improperly. Deltro was unable to file its motion for summary judgment while the removal dispute was proceeding because it would have been inconsistent to simultaneously challenge the proceeding being in a federal forum and seek a dispositive ruling from the federal forum.

EPS has known the factual grounds, argument, and legal citations that Deltro's pending Motion for Partial Summary Judgment is based on since March 2021. Now that the removal/remand dispute has been resolved, the Motion for Partial Summary Judgment

can and has been filed. Deltro seeks to expedite the two pending related motions so that a ruling can be obtained before the significant renewal premium comes due on April 20, 2022.

B. Pending Motion for Leave to Amend Complaint

The pending Motion for Leave to Amend Complaint seeks to add PCL and the bond sureties as necessary parties because their liability under the bond would be affected if EPS's lien is invalidated by the declaration Deltro seeks. Deltro also seeks to add a federal declaratory judgment count corresponding to the existing Ohio declaratory judgment count now that this diversity action is in federal court.

EPS's opposition, if it does oppose the Motion for Leave to Amend Complaint, is due March 15, 2022. Deltro provided EPS a copy of the motion and proposed complaint on February 14, 2022 – a week before it was filed – when seeking consent. Deltro requests that if EPS is to oppose, EPS file its opposition 21 days from the earlier date. That would place EPS's opposition, if any, as due March 7, 2022. If Deltro files a reply, Deltro agrees to shorten its 14-day reply period to 7 days from the opposition.

C. Motion for Partial Summary Judgment.

EPS has known the grounds for Deltro's Motion for Partial Summary Judgment since March 2021. EPS's opposition is currently due March 16, 2022. Deltro does not ask that EPS's time to oppose be shortened, only that EPS file its opposition by the rule deadline and not take an extension. If Deltro files a reply, Deltro agrees to shorten its 14-day reply period to 7 days from the opposition on this motion as well.

If granted, the result Deltro intends is that PCL and the sureties would be added to the case and able to join the motions if they so choose as well as the Motion for Partial Summary Judgment being fully brief by March 23, 2022.

D. Ruling on Motion for Partial Summary Judgment.

Finally, although Deltro is cognizant of the Court's schedule and case load, Deltro respectfully requests a ruling on the Motion for Partial Summary Judgment prior to April 20, 2022 if possible.

Respectfully submitted,

/s/ Nicholas W. Schwandner
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CERTIFICATE OF SERVICE

I certify that a copy was filed electronically, on February 28, 2022, via the Court's CM/ECF system, which will serve notification upon:

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